

Notice of Allowability

Application No.

10/693,364

Applicant(s)

LINTOTT, KEITH G.

Examiner

Art Unit

June Hwu

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed December 20, 2004.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 20 December 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Reason for Allowance

The amendment filed December 20, 2004 has been entered.

Drawing

The drawing filed December 20, 2004 has been approved.

The information regarding the cultivar Nighthawk Yellow was described in the 2002 Garden Mum Catalog as a possible offer for sale, more than one year prior to filing of this instant application. A sale of the invention in this country, more than one year before the date of the application would constitute a bar under 35 USC 102(b).

In the response filed December 20, 2004, Applicant states that Ball Seed was an independent company and was not controlled by Royal Van Zanten or Cleangro. Royal Van Zanten owned by Royal Van Zanten (Europe) is part owner of Cleangro (page 2 of reply).

Applicant states that perspective customers did not receive the 2002 Royal Van Zanten Garden Mum Catalog until after October 25, 2001, less than one year prior to the effective filing date of this instant application (page 3 of reply). The catalog was just an advertisement disclosing the instant cultivar. In addition, Applicant states that Ball Seed and Royal Van Zanten did not agree to the final sale terms until after the catalog was mailed, less than one year prior to the effective filing of this application (page 4 of reply). Applicant further states that he is not aware of any sales or offers of sale of the instant cultivar prior to the distribution of the catalog and October 24, 2001 (page 5 of reply).

Moreover, Applicant states that the first royalty for the instant cultivar occurred in March 2002 less than one year prior to the effective filing date of the instant application (page 5 of reply). Applicant also states that the instant cultivar had not been sold, offered for sale or publicly available in the United States or anywhere, more than one year prior to the effective

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filing of the U.S. application (page 4 of IDS filed July 1, 2004). Applicant states that the instant cultivar had not appeared in any printed publication, more than one year prior to the effective filing date of this instant application (page 4 of IDS filed July 1, 2004).

Sales representatives of Ball Seed would not have been able to accept any orders for the instant cultivar because the pricing was not agreed until after October 25, 2001, less than one year prior to the effective filing date of this instant plant application. Applicant was not aware of any offer or sale of the claimed plant (page 6 of reply). As a result, there is no evidence of the instant plant being described in a printed publication anywhere in the world, in public use or on sale in this country, more than one year prior to the effective filing date of this instant application.

The specification provides as complete a botanical description as reasonably possible of the claimed plant. The completeness of the description is sufficient to distinguish this new plant from the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Future Correspondence

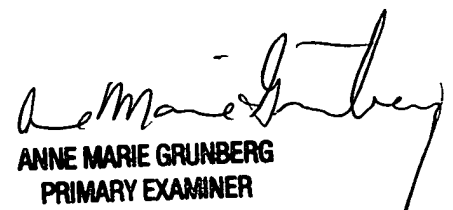
Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH


ANNE MARIE GRUNBERG
PRIMARY EXAMINER